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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1926 OF 2007

Joseph John Gonsalvis Petitioner
versus
Philomina Landslord D'Souza
and others Respondents

Ms.Neeta P. Karnik for petitioner.
Mr.A.J.Almeida for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 24th April 2007

PC :

1. Heard advocates for the petitioner and for the respondents. The petitioner is the original plaintiff. An application filed by the petitioner for grant of temporary injunction was allowed by the Trial Court. In an appeal preferred by the respondents, the learned District Judge by the impugned order dated 1st March 2007 has set aside the order passed by the Trial Court in favour of the petitioner.

2. The learned advocate for the petitioner has invited my attention to various documents on

record of the Trial Court. She has invited my attention to the findings recorded by the Trial Court and submitted that the documentary evidence produced on record is more than sufficient to prima facie establish that the petitioner was in possession of the suit property on the date of institution of the suit. It was submitted that the revenue record supports the case of the petitioner and entries of the name of the predecessor of the respondents never appeared from 1958-1959 in the revenue record. She submitted that there is a prima facie material to show that the petitioner is in possession of the structure on the suit property. The learned advocate for the respondents has invited my attention to various documents on record and in particular orders passed in the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948.

3. I have considered the submissions. The prima facie finding recorded by the District Court is that one Pejav Alex Soz @ D'Souza was the tenant in respect of the suit land and there was no evidence on record to show that the petitioner or his predecessors obtained possession of the suit land from the said Pejav. The Appellate Court

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observed that as the revenue records indicated that at least till 1956 the said Pejav was in possession as an agricultural tenant, in absence of any material on record to show that the petitioner or his predecessor was placed in possession, the case made out by the petitioner cannot be accepted. It must be noted here that the suit filed by the petitioner is for an injunction on the footing that the petitioner is in possession on the date of institution of the suit. Reliance is placed on entries in 7/12 extracts showing possession of the petitioner. It is not in dispute that in the year 1955 name of said Pejav was mutated in the revenue records in the other rights column as he was a protected tenant. The said name was mutated vide Mutation Entry No.1990 dated 2nd October 1955. By mutation Entry No.2034 dated 25th August 1956 the surname of the said Pejav was corrected. By judgement and order dated 4th July 1962 passed by the Commissioner, Bombay, Mutation Entry No.2034 was set aside and the case was remanded to the Tahsildar for a fresh enquiry. In the said order it was observed that as the dispute was regarding tenancy, the same will have to be got decided from the Tenancy Court.

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4. It must be noted here that an appeal being Tenancy Appeal No.19 of 1999 was preferred before the Sub Divisional Officer under the provisions of Section 74 of the said Act of 1948. To the said appeal the original owner of the land George Alfred Jema Pariera was a party respondent. While dismissing the said appeal the Sub Divisional Officer referred to the order of remand passed by the Commissioner and stated that an enquiry will have to be held as per the said order of remand.

5. If the aforesaid orders are considered, the view taken by the Appellate Court that there was no evidence on record to show as to how the possession was obtained from the said Pejav cannot be said to be perverse. Once the name of the said Pejav was mutated in revenue record on the ground that he was a protected tenant under the Bombay Tenancy and Agricultural Lands Act, 1948, he could have been dispossessed only by taking recourse to the provisions of the said Act of 1948. Grant of temporary injunction is an equitable and discretionary relief. When the Appellate Court found that there was no prima facie evidence to show as to how said Pejav whose name was entered as protected tenant was

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dispossessed, the relief of temporary injunction has been denied to the petitioner. I find no case to interfere with the impugned order in a petition under Article 227 of the Constitution of India. The petition is accordingly rejected. It is made clear that the observations made in this order are for limited purpose for considering the prayer made in this writ petition and all contentions of the parties in the pending suit and all other pending proceedings are expressly kept open.

6. Learned advocate for the petitioner prays for grant of a limited interim relief. The said prayer is opposed by the learned advocate for respondent. My attention has been invited to the order dated 28th February 2006 passed below application at Exhibit-5 in the appeal preferred by the respondents. The said order was operating during pendency of the appeal. Considering the facts and circumstances of the case, the order dated 28th February 2006 passed by the Appellate Court will continue to operate for a period of ten weeks from today.

(A.S.OKA, J.)